

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96813

August 28, 2009

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Oahu

Amend Board Action of July 11, 2008, Agenda Item J-1, Authorizing Issuance of a Request for Qualifications / Request for Proposals for public lands at Ala Wai Small Boat Harbor ("AWSBH"); Approve Selection of Developer for Exclusive Negotiations of a Development Agreement and Lease for the Fuel Dock and Haul-out/Repair Sites at AWSBH, Kalia, Honolulu, Hawaii; Authorize the DLNR Chairperson to Negotiate and Enter the Development Agreement and Lease. Tax Map Key Nos: (1) 2-3-37:20, (1) 2-6-10:05, 16, and portions of parcel 3.

REQUEST:

Amend Board Action of July 11, 2008, Agenda Item J-1, Authorizing Issuance of a Request for Qualifications / Request for Proposals for public lands at Ala Wai Small Boat Harbor ("AWSBH"); Approve Selection of Developer for Exclusive Negotiations of a Development Agreement and Lease; Authorize the DLNR Chairperson to Negotiate and Enter the Development Agreement and Lease.

APPLICANT:

Department of Land and Natural Resources ("DLNR"), Division of Boating and Ocean Recreation ("DOBOR").

LEGAL REFERENCE:

Sections 171-6, 16, 17, 18, 19, 35, 36, 41, 53, 54, 59, and other applicable sections of Chapters 171 and 200, Hawaii Revised Statutes, as amended ("HRS").

AMENDMENT TO PRIOR BOARD ACTION OF JULY 11, 2008:

On July 11, 2008, as Agenda Item J-1, the Board of Land and Natural Resources ("Board") authorized the issuance of a Request for Qualifications / Request for Proposals for the parcels of the land at AWSBH that housed the harbor's fuel dock and haul-out/repair facilities. These lands were identified in DOBOR's staff submittal by TMK No. (1) 2-3-37:20 (for the fuel dock site) and TMK Nos. (1) 2-6-10:05 and 16 (for the haul-out/repair site). However, the haul-out/repair site also includes three small portions of land that are a portion of TMK No. (1) 2-6-10:03, which was inadvertently omitted in the staff submittal. The applicable portions of TMK Parcel 3 are shown on **Exhibit A-1**. The first portion (a) is adjacent 5, was described under the submerged lands portion of the RFP (pages 2 & 22; Attachment 4) shown as **EXHIBIT A-2**. The second portion (b), is located adjacent to the canal of 16 and the third sliver (c) is bordered by 5, 16, and the Holomana Harbor Road.. Staff is now seeking to correct this oversight and requests the Board amend its prior approval to include these small portions of TMK Parcel 3.

SUBJECT PROPERTIES:

Two non-contiguous parcels of state owned lands within the AWSBH situated at Kalia, Honolulu, Hawaii and described below as the Haul-Out/Repair Site and the Fuel Dock Site (collectively referred to as the "Subject Properties"). DOBOR manages these lands pursuant to Executive Order Nos. 1795 and 2575.

Haul-Out/Repair Site: This parcel is identified by TMK Parcel Nos. 2-6-010:005, 16 and portion of 3 and consists of approximately 38,369 square feet as shown on **Exhibit A-1**. The estimated total of the small portions of (a), (b), (c) may be approximately 300-400 square feet, plus or minus. Until recently, a boat haul-out/repair facility was operated on this site by Ala Wai Marine, Ltd. (AWM) under License 74 and Revocable Permit No. B-93-39. By way of the Board's approval on July 11, 2008, Item J-1, the Board authorized the cancellation of Revocable Permit B-93-39 and the License 74 effective as of the date(s) to be determined by the Chairperson. The Chairperson gave notice on October 27, 2008 directing AWM to vacate the RP portion of the property by November 30, 2008, and effective January 1, 2009 to cease all operations in the License 74 property. AWM was allowed to stay on the property until February 28, 2009 for the specific purpose of remediation of any environmental impacts and the potential removal of improvements upon the property associated with their occupancy. The property is not occupied at this time.

Fuel Dock Site: This parcel is identified by TMK Parcel No. 2-3-037:020 and consist of approximately 15,199 square feet as shown on **Exhibit B**. Magic Island Petroleum Inc. currently operates a fuel facility and convenience store on this site under Revocable Permit No. B-03-06.

TRUST LAND STATUS:

Section 5(a) and 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

BACKGROUND:

DOBOR has been implementing a comprehensive improvement plan for the AWSBH, which calls for replacing the boat docks and upgrading various other marina support facilities. Part of DOBOR's plans call for the Subject Properties to be redeveloped in a manner that will improve and upgrade the fuel and haul-out/boat repair facilities and increase the revenues generated from these lands to support DOBOR's operations.

On July 11, 2008, as Agenda Item J-1, the Board of Land and Natural Resources approved the issuance of a Request for Qualifications / Request for Proposals ("RFQ/RFP") to solicit potential developers to lease and redevelop the Subject Properties.

Development of the Subject Properties will require the selected developer to undertake various predevelopment activities before a lease can be issued and construction can commence, e.g., due diligence, comply with HRS Chapter 343 requirements (i.e., EAEIS), and obtain necessary approvals from the City and County of Honolulu (e.g., SMA approval). Therefore, the developer selected via the RFQ/RFP will enter exclusive

negotiations of a development agreement that will set forth the predevelopment terms and conditions the developer must satisfy before DOBOR will issue a lease for the Subject Properties. If the developer fails to satisfy all of the terms and conditions of the development agreement, no lease will be issued.

As set forth in the RFQ/RFP, the exclusive negotiation period for the development agreement will be six (6) months, and if the development agreement is not executed within that time period, all rights of the selected developer to negotiate the development agreement will terminate.¹

RFQ/RFP PROCESS:

The RFQ/RFP consisted of two phases: (1) the Request for Qualifications ("RFQ") phase; and (2) the Request for Proposals ("RFP") phase.

The RFQ phase required interested developers to submit their qualifications, including information regarding their real estate development and management experience and their financial capacity. DOBOR received submittals from two prospective developers. A four-member evaluation committee formed by DOBOR reviewed the submittals and determined both developers met the required qualification criteria.

The two "qualified" developers were notified to proceed with preparing and submitting their respective development proposals according to the RFP procedures. The RFP phase required the qualified developers to submit their proposed development plan for the Subject Properties, along with their economic proposal (e.g., proposed lease rent, lease terms, etc) and business plan (e.g., proposed development schedule, cost estimates, market analysis, financial projections, financing strategy, etc).

Only one of the two qualified developers submitted a development proposal. The development proposal was submitted by Honey Bee USA, Inc. ("Honey Bee").

OVERVIEW OF HONEY BEE'S DEVELOPMENT PROPOSAL:

Development Plan. The following is an overview of Honey Bee's development plan for the Subject Properties:

- Haul-Out/Repair Site: Construct a new three-story commercial building called the "Boatyard Building" on the mauka side of the site fronting Ala Moana Boulevard. The Boatyard Building will include boat repair facilities, retail stores, food businesses, offices, and a deck connecting it to Ala Moana Boulevard. An upgraded vessel repair facility will be constructed with a state-of-the-art drainage system designed to screen out pollutants.

Construct a new wedding building that will include a wedding chapel and related facilities.²

¹ The RFQ/RFP authorizes the BLNR Chairperson, in his/her sole discretion, to extend the negotiation period for up to an additional six (6) months.

² Honey Bee initially indicated the wedding facility would be constructed by a wedding operator under a sublease arrangement. Honey Bee subsequently informed DOBOR that Honey Bee would construct the facility and sublet all or a portion of the facility to a wedding operator.

Fuel Dock Site: Construct a new three-story building called the "Peninsula Building". The ground floor will consist of a renovated fuel station, a convenience store, and other marine related services. The original proposal was to have a restaurant and night, club, although the decision to lease the second floor to a wedding company was made in response to the lack of parking on the property and not disturb the surrounding tenants. A revised proposal has a wedding chapel/facility to be located on the second floor and a bar on the third floor. The site will also include additional ocean recreational facilities, such as kayak and surfboard racks, a ramp suitable for launching kayaks, outdoor shower, and storage lockers.

The Subject Properties are located within the City and County of Honolulu's ("City") Waikiki Special Design District ("WSD") Public Precinct zoning district. The City Department of Planning and Permitting ("DPP") has indicated the proposed wedding chapel, retail establishments, and banquet facilities require a use variance for such facilities to be developed within the WSD Public Precinct zoning district, and that DPP is willing to work with Honey Bee and DLNR. See DPP letter dated July 17, 2009 attached as **Exhibit C**.³

Submerged Lands. As permitted in the RFQ/RFP, Honey Bee's proposal seeks to lease approximately 10,600 square feet of submerged lands adjacent to the Haul-Out/Repair Facility Site and approximately 11,880 square feet of submerged lands adjacent to the Fuel Dock Site to be used as moorings.⁴

Lease Rent. The RFQ/RFP set forth the following minimum upset rents and percentage rents for the first 30 years of the lease for the fast lands and any submerged lands sought by the applicant.⁵ Honey Bee's proposal provided for the following lease rents, which equaled or exceeded the upset rents:

Minimum Base Rent - Fast Lands:	\$564,000/yr (Years 1-10) \$700,000/yr (Years 11-15) \$800,000/yr (Years 16-20) \$920,000/yr (Years 21-25) \$1,100,000/yr (Years 26-30)
Percentage Rent - Fast Lands:	Eight percent (8%) of gross revenues from commercial operations conducted on the Subject Properties (to the extent it exceeds the minimum rent); and \$0.005 per gallon of fuel sold
Minimum Rent - Submerged Lands:	\$134,880.00/yr (Years 1-10) \$175,344.00/yr (Years 11-15)

³ Staff recommends the Development Agreement provide Honey Bee a reasonable time period to seek the use variance, and require Honey Bee pay DLNR a non-refundable fee to compensate DLNR while Honey Bee seeks the variance. If Honey Bee successfully obtains the variance, the fee may be applied towards any future fees or rents to be paid by Honey Bee.

⁴ On August 14, 2009, as Agenda Item H, the Board authorized the leasing of submerged lands at AWSBH.

⁵ The RFQ/RFP provided for the lease rents to be redetermined after the initial 30 year period.

\$201,645.90/yr (Years 16-20)
\$231,993.60/yr (Years 21-25)
\$266,837.60/yr (Years 26-30)

Percentage Rent - Submerged Lands: Ten percent (10%) of gross mooring fees/revenues to the extent such percentage rent exceeds the minimum rent

DOBOR'S EVALUATION OF HONEY BEE'S PROPOSAL:

Honey Bee's proposal was reviewed by an evaluation committee formed by DOBOR. The evaluation committee reviewed the proposal based on the evaluation criteria set forth in the RFQ/RFP, including: the degree to which the proposed development plan met DOBOR's development objectives for the Subject Properties; the proposed financial returns to the State (e.g., proposed lease rents); the reasonableness of the proposed business plan and development schedule; the financial feasibility of the development proposal; and the developer's ability to finance the development proposal.

Pursuant to the terms and conditions of the RFQ/RFP, the selected developer would be granted the exclusive right to negotiate a development agreement with DOBOR. Because Honey Bee's proposal was the only proposal submitted, the evaluation committee was not faced with ranking multiple proposals or scoring the proposals based on the various evaluation criteria. Therefore, the evaluation committee reviewed Honey Bee's proposal from the perspective of whether the proposal was reasonable and whether it merited Honey Bee being selected to enter into exclusive negotiations with DOBOR. The evaluation committee recommended Honey Bee be selected and DOBOR is now seeking the Board's approval.

DEVELOPMENT AGREEMENT:

Upon the Board's approval of Honey Bee as the selected developer, Honey Bee and DLNR will enter exclusive negotiations of a development agreement that will set forth the predevelopment terms and conditions the developer must satisfy before DOBOR will issue a lease for the Subject Properties. If the developer fails to satisfy all of the terms and conditions of the development agreement, no lease will be issued.

The development agreement will require Honey Bee to perform, at a minimum, the following: (a) the payment of a fee or fees to DLNR in consideration for DLNR removing the property from the real estate market during exclusive negotiations and the term of the development agreement; (b) obtain a use variance and/or a conditional use permit, if either are required by the City and County of Honolulu ("City") Department of Planning and Permitting; (c) prepare any environmental assessments or environment impact statements necessary to comply with HRS Chapter 343⁶; (d) obtain a Special Management Area Permit from the City; and (e) obtain subdivision or joint development approval from the City.

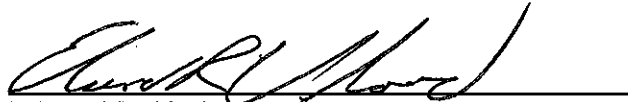
⁶ If an Environmental Impact Statement ("EIS") is required, the EIS will be presented to the Board prior to the issuance of a lease. A presentation to the Board shall not be required if an Environmental Assessment is prepared that results in the issuance of a Finding of No Significant Impact.

RECOMMENDATION:

That the Board:

1. Amend its approval of July 11, 2008, Agenda Item J-1, to authorize the portions of TMK Parcel (1) 2-6-10:03 described above be included in the Request for Qualifications / Request for Proposals for the Ala Wai Small Boat Harbor and any subsequent development agreement and lease resulting therefrom;
2. Approve the selection of Honey Bee USA, Inc. ("Honey Bee") as the developer to enter exclusive negotiations of a development agreement pursuant to the terms and conditions of the RFQ/RFP and as described above;
3. Authorize the Chairperson to negotiate the terms of the development agreement and proposed lease with Honey Bee, subject to review and approval by the Department of the Attorney General; and
4. Authorize the Chairperson to enter into the development agreement, lease, and any other related documents.

Respectfully Submitted,

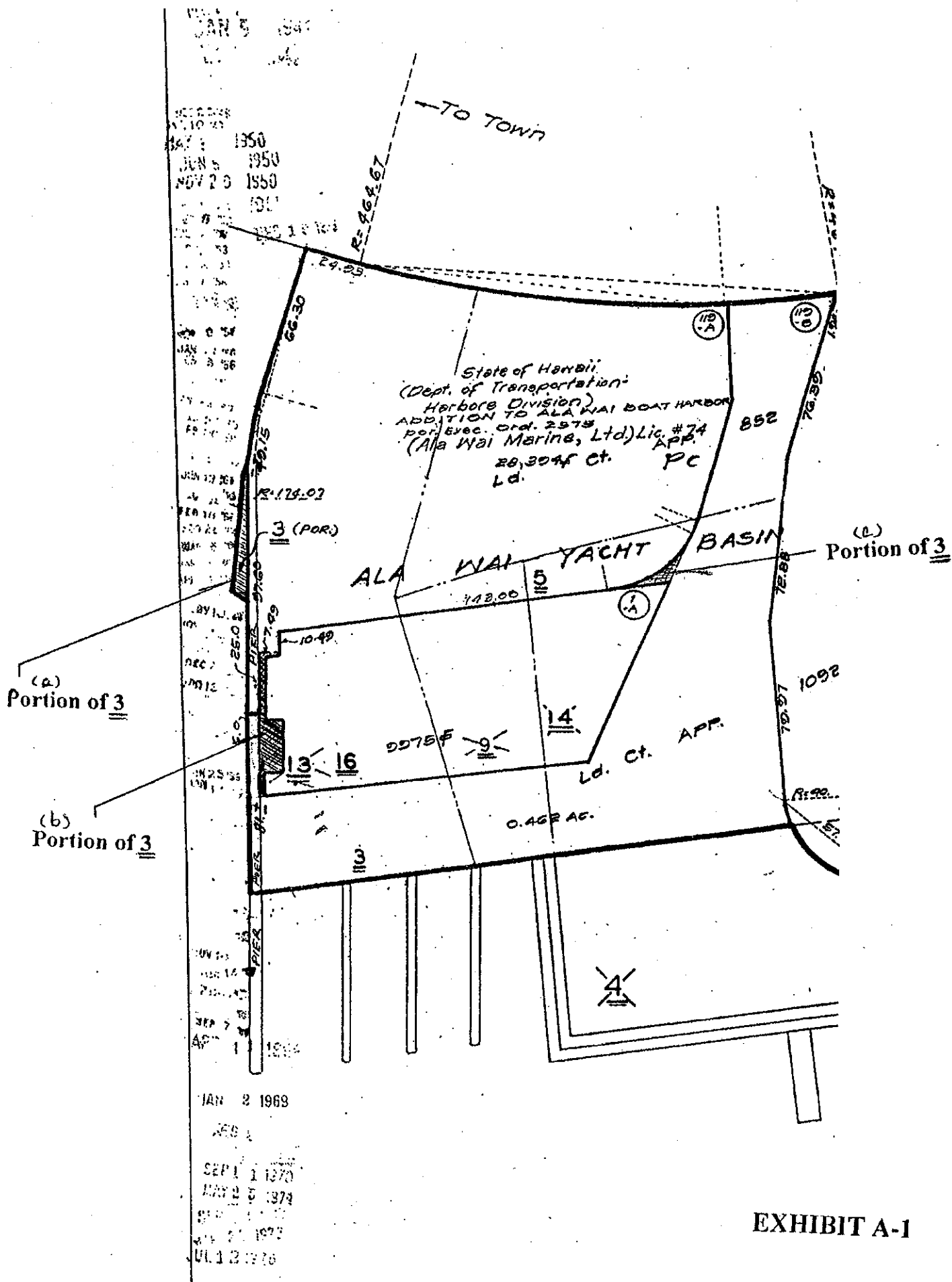


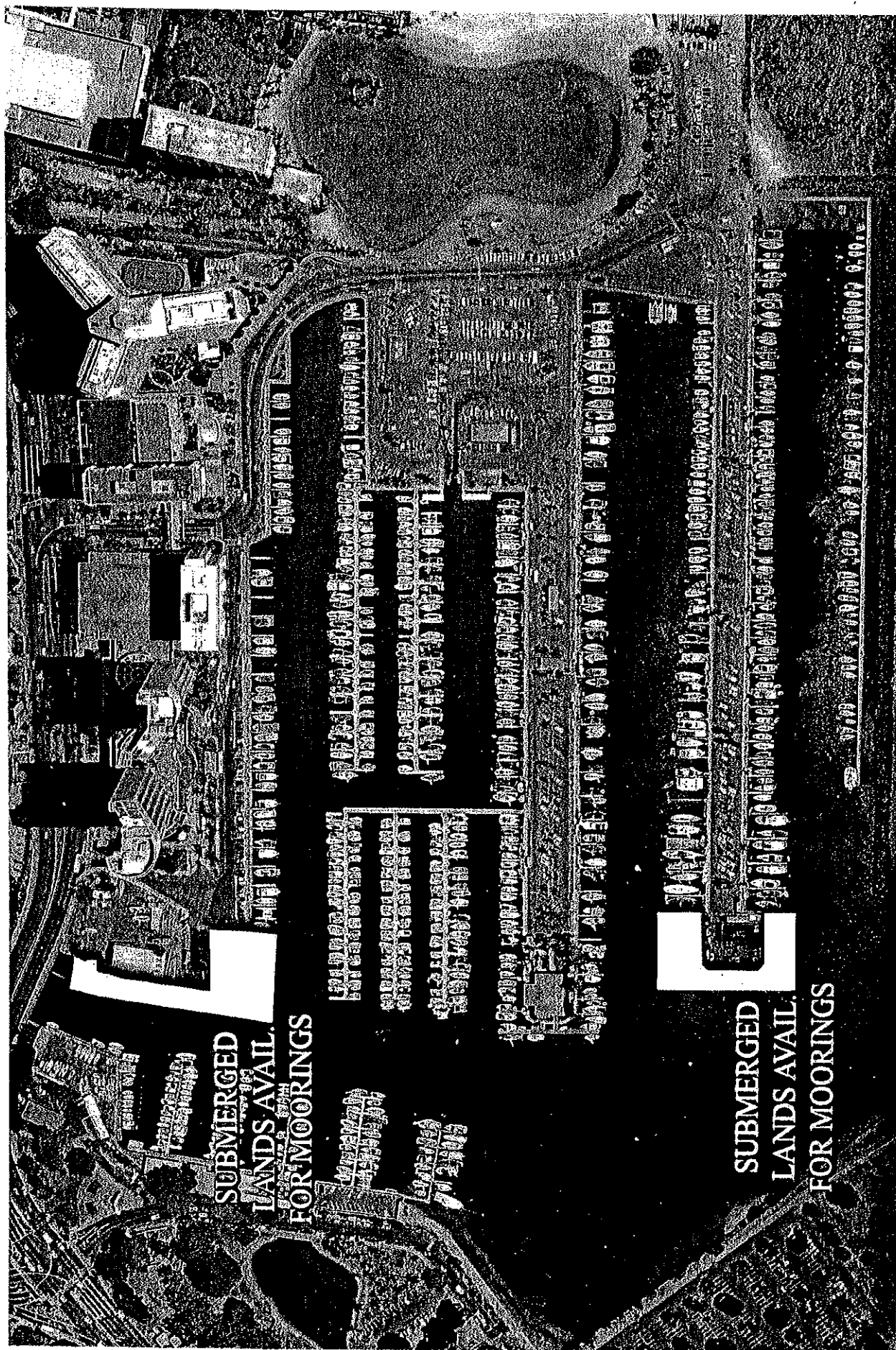
Edward R. Underwood
Administrator

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson

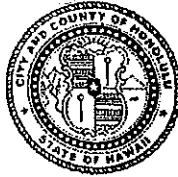




ATTACHMENT 4: MAP OF SUBMERGED
LANDS AVAILABLE FOR MOORINGS

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
TELEPHONE: (808) 768-6000 • FAX: (808) 768-6041
DEPT. WEB SITE: www.honolulu.gov • CITY WEB SITE: www.honolulu.gov



MUFU HANNEMANN
MAYOR

DAVID K. TANQUE
DIRECTOR
ROBERT M. SUMITOMO
DEPUTY DIRECTOR

2009/ELOG-1628(TC)

July 17, 2009

Mr. Edward R. Underwood, Administrator
Department of Land and Natural Resources
Division of Boating and Ocean Recreation
State of Hawaii
333 Queen Street, Suite 300
Honolulu, Hawaii 96813

Dear Mr. Underwood:

Subject: Request for Review and Comment
Ala Wai Small Boat Harbor - Fuel Dock and Haul-Out / Repair Sites
1651 and 1671 Ala Moana Boulevard and Ala Wai Yacht Harbor
Tax Map Key 2-3-37: 20 and 2-3-10: 5, 16, and Portion of 3

This responds to your memorandum (dated June 12, 2009) regarding the proposed improvements to the fuel dock and haul-out/repair sites at the Ala Wai Yacht Harbor.

Our understanding is that the existing support facilities at the Ala Wai Small Boat Harbor requires considerable improvements and upgrades and that the State of Hawaii, Department of Land and Natural Resources (DLNR) is attempting to develop a private-public partnership as a means to improve the support facilities as well as provide additional revenue to support harbor operations and improvements.

In this regards, we are committed to working with the DLNR and the private developer in exploring the project's options and challenges. The DLNR's participation in the permitting process and emphasis of the public benefits afforded by this project can provide justification and support for such an endeavor. From a land use perspective, the following is a summary of the various permits required for such a project to proceed.

The proposed wedding chapel, retail establishments, and banquet facilities are not permitted uses within the Public Precinct of the Waikiki Special District and they require a use variance. The proposal will also require a Special Management Area Use Permit (SMP) for portions of the project that occur within the Special Management Area, and a Waikiki Special District Permit (WSD) for the new buildings. Compliance with HRS Chapter 343 will be required.

EXHIBIT C

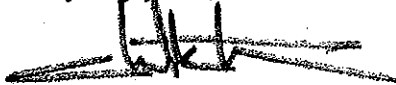
Mr. Edward R. Underwood
July 17, 2009
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The zoning variance must be obtained prior to the processing of the SMP and WSD. To obtain variance approval, an applicant must meet the three tests of hardship specified by the City Charter. Essentially, an applicant must show that he would be deprived of reasonable use of his land or building without the variance, that his request is due to unique circumstances, and that the proposal would not alter the essential character of the neighborhood. The Director of the Department of Planning and Permitting (DPP) may consider comments from government agencies and the general public, and will render a written decision and order after the required public hearing is held. The zoning variance may take from three to five months (after the acceptance of the application).

Generally, the DPP may take up to about 70 days to process an SMP. The DPP must forward its report and recommendation to the City Council within ten days after the public hearing is held. The WSD permit takes about 90 days to process, but it may be processed concurrently with the SMP. Additional information about each permit is available on our website at www.honoluludpp.org.

Should you have any questions or need additional information, please contact Anthony Ching of our Urban Design Branch at 768-8028.

Very truly yours,



David K. Tanoue, Director
Department of Planning and Permitting

DKT:nw

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